



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

Hong Kong Institute of Certified Public Accountants withdraws the complaint against a CPA and a firm

(HONG KONG, 29 July 2022) The Hong Kong Institute of Certified Public Accountants ("HKICPA") has withdrawn the complaint against Mr. Fan Kin Nang, certified public accountant (F02970) and Ken Fan & Co. (firm no. 2122) before a Disciplinary Committee, paid a sum of HK\$2,800,000 as a contribution to the Respondents' costs of and incidental to the investigation and disciplinary proceedings and discontinued the disciplinary proceedings. The HKICPA arrived at this decision in the interests of the public and the profession after further considering the merits of the case, the duration of the proceedings, and the potential impact on the application of the relevant professional standard.

In the course of the disciplinary proceedings, the Disciplinary Committee gave directions in relation to disclosure to the Respondents of certain unused materials held by the Complainant. An extract of the Disciplinary Committee's decision can be viewed on the Institute's website at:

https://www.hkicpa.org.hk/-/media/HKICPA-Website/New-HKICPA/Standards-and-regulation/Compliance-Dept/Press-Release/2022/July-2022/1293W_Fan-Kin-Nang_Withdraw/Extract-of-the-decision-of-the-directions-hearing.pdf.

About HKICPA Disciplinary Process

The Hong Kong Institute of Certified Public Accountants ("HKICPA") enforces the highest professional and ethical standards in the accounting profession. Governed by the Professional Accountants Ordinance (Cap. 50) and the Disciplinary Committee Proceedings Rules, an independent Disciplinary Committee is convened to deal with a complaint referred by Council. If the charges against a member, member practice or registered student are proven, the Committee will make disciplinary orders setting out the sanctions it considers appropriate. Subject to any appeal by the respondent, the order and findings of the Disciplinary Committee will be published.

For more information, please see:

<http://www.hkicpa.org.hk/en/standards-and-regulations/compliance/disciplinary/>

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About HKICPA

The Hong Kong Institute of Certified Public Accountants ("HKICPA") is the statutory body established by the Professional Accountants Ordinance responsible for the professional training, development and regulation of certified public accountants in Hong Kong. The Institute has nearly 47,000 members and 14,000 registered students.

Our qualification programme assures the quality of entry into the profession, and we promulgate financial reporting, auditing and ethical standards that safeguard Hong Kong's leadership as an international financial centre.

The CPA designation is a top qualification recognised globally. The Institute is a member of and actively contributes to the work of the Global Accounting Alliance and International Federation of Accountants.

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香港會計師公會撤回對一名會計師及會計師事務所的投訴

(香港，二零二二年七月二十九日) 香港會計師公會(「公會」)已撤回在轄下一紀律委員會席前對會計師范健能先生(會員編號：F02970)及范健能會計師事務所(事務所編號：2122)(「答辯人」)的投訴，並支付答辯人在調查及紀律聆訊期間的部份訟費及附帶費用共 2,800,000 港元，並已停止有關紀律程序。公會基於公眾及會計專業利益的前提下，進一步審視相關投訴的可確立性、紀律程序所需的時間及對有關的專業準則在應用上的潛在影響後作出上述決定。

在紀律程序期間，委員會曾指示投訴人就其持有的未經採用文件向答辯人作出披露。委員會有關的決定的摘要可透過在公會網站 https://www.hkicpa.org.hk/-/media/HKICPA-Website/New-HKICPA/Standards-and-regulation/Compliance-Dept/Press-Release/2022/July-2022/1293W_Fan-Kin-Nang_Withdraw/Extract-of-the-decision-of-the-directions-hearing.pdf 上查閱。

香港會計師公會的紀律處分程序

香港會計師公會致力維持會計界的最高專業和道德標準。公會根據香港法例第 50 章《專業會計師條例》及紀律委員會訴訟程序規則，成立獨立的紀律委員會，處理理事會轉介的投訴個案。委員會一旦證明對公會會員、執業會計師事務所會員或註冊學生的檢控屬實，將會作出適當懲處。若答辯人未有提出上訴，紀律委員會的裁判將會向外公佈。

詳情請參閱：

<http://www.hkicpa.org.hk/en/standards-and-regulations/compliance/disciplinary/>

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關於香港會計師公會

香港會計師公會是根據《專業會計師條例》成立的法定機構，負責培訓、發展和監管本港的會計專業。公會會員近 47,000 名，學生人數近 14,000。

公會開辦專業資格課程，確保會計師的人職質素，同時頒佈財務報告、審計及專業操守的準則，以鞏固香港作為國際金融中心的領導地位。

CPA 會計師是一個獲國際認可的頂尖專業資格。公會是全球會計聯盟及國際會計師聯合會的成員之一，積極推動國際專業發展。

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Extract of the decision of the directions hearing

Background

1. In 2018, a Disciplinary Committee (the “DC”) was constituted to deal with the Complaint against the Respondents.
2. After the DC was constituted, an anonymous letter with accompanying documents addressed to the Chairman of the DC and quoting the HKICPA’s reference number for the disciplinary proceedings was received by the HKICPA. The DC invited submissions from the parties and was informed by the Respondents that various anonymous complaint letters accompanying documents had previously been received by the Institute. The Respondents had repeatedly requested disclosure of such anonymous complaint letters and documents but such letters and documents had not been disclosed.
3. The Complainant maintained that the anonymous complaint letters and documents were not relevant to the Complaint. Further, the Complaint was a whistleblowing case and the anonymous complainant had specifically requested that the letters shall not be disclosed to protect himself/herself. The Complainant argued that the informer privilege should be available to anonymous complainants or whistleblowers as a matter of public policy since potential informants would be deterred from coming forward if they were not afforded protection.
4. The Respondents requested the DC to direct the Complainant to disclose documents from the anonymous complaint, including all anonymous complaint letter, correspondence, and any other documents obtained in the course of investigation which are relevant to the disciplinary proceedings. A directions hearing was held. The DC was to consider in the present case:
 - (a) Whether the documents from the anonymous complaint letters (including all anonymous complaints, correspondence, and any other documents obtained in the course of investigation) (the “**Unused Materials**”) are relevant to the disciplinary proceedings; and
 - (b) Whether such documents are subject to informer privilege as a species of public interest immunity.
5. The DC’s decisions are extracted in the ensuing paragraphs.

Relevance

6. The DC considered judicial decisions including *Securities and Futures Commission v Wong Yuen Yee & Ors* [2017] 1 HKLRD 788 and *HKSAR v Lee Ming Tee* (2003) 6 HKCFAR 336. The court held in those cases that the duty of disclosure by the prosecution in criminal proceedings is equally applicable to the disciplinary proceedings. Disclosure is not limited to evidence which will advance the case of the accused but all the material evidence which the prosecution have gathered and from which the prosecution have made their own selection of evidence.

7. Given the severity of the potential outcome of disciplinary proceedings, the court held that a "*generous view of relevance*" that is applicable to the prosecution in criminal proceedings should be adopted in disciplinary or regulatory cases. Under this approach, a document would be relevant if it **may** lead the other party to further inquiries, unless it is obviously irrelevant even on the generous test. Recognising that the Complaint could have serious consequences on the career, reputation and livelihood of the Respondents, the DC decided that the aforesaid generous test is applicable.
8. **The DC applied the relevant tests and found that the Unused Materials were relevant to the Complaint.** The Unused Materials include 8 anonymous complaint letters enclosing various purported internal documents of the Respondents. The DC was satisfied that the Unused Materials which have been received by the Institute formed part of the materials that were reviewed in the course of the Institute's investigation, and that the Institute had previously selected a number of these documents in support of their case against the Respondents. For those within the Unused Materials which had not been included in the Complainant's case, the DC was of the view that such documents have been considered by the Complainant at some stage during the investigation.
9. In particular, the Unused Materials were held to have been "*obtained from the investigation of the transactions that are eventually relied upon and complained of*" in the proceedings as per the case of *Wong Yuen Yee*. They were not regarded as "obviously irrelevant" given that they all relate directly to the transactions being the subject matter of the Complaint. Finally, **the DC observed that the Institute did not have the background knowledge possessed by the Respondents with regards to the Unused Materials and was not privy to the potential arguments and strategy of the Respondents who may be able to put a different light on the documents, or who may be prompted to pursue further and potentially fruitful line of enquiries which may eventually advance the Respondent's case or damage the Complainant's case.**

Public Interest Immunity and Informer Privilege

10. On informer privilege as a species of public interest immunity to justify the non-disclosure of the Unused Materials, the DC considered judicial decisions including *Competition Commission v Nutanix Hong Kong Limited and others* [2018] 3 HKC 173, the *Wong Yuen Yee* and the *Lee Ming Tee* case. In those cases, the Court found that an informer's identity is privileged from disclosure in criminal or civil proceedings also applies to informers to disciplinary proceedings. The privilege covers not only the informer's name but any information that singly or in combination might tend to reveal his or her identity. However, informer privilege is not absolute and is subject to exceptions. The Court would need to balance the public interest in the protection of informers and the interests of the person seeking disclosure.
11. The DC also considered the **Guidance Notes for Filing a Complaint (the "Guidance Notes") that was available on the Institute's website. The Guidance Notes informs an anonymous complainant that relevant information will be disclosed to the CPA.** The DC was of the view that the Guidance Notes were in line with legal position in Hong Kong and the DC was obliged to apply the Guidance Notes.

12. After balancing the public interest in the protection of the anonymous complainant and the countervailing interests advanced by the Respondents seeking disclosure, **the DC found that, as a matter of fairness, the Respondents should be given the opportunity to represent on the allegations made by the anonymous complaint in the Unused Materials.** Also relevant to the DC's balancing exercise is the fact that there was no evidence to show that the Unused Materials could reveal the identity of the anonymous complainant, and that if the identity of the anonymous complainant is already known to the Respondents, there is little point in withholding the Unused Materials from disclosure.

Directions

13. **The DC directed that all anonymous complaints, letters, documents and communication received by the Institute in connection with the Complaint were relevant to the proceedings and should be disclosed to the Respondents and the DC with immediate effect.**